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Attorneys for Defendant
ANDREW TRADER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

ALPHA INVESTMENT, LLC,

Plaintiff,

v.

ZYNGA INC. and ANDREW TRADER,

Defendants.

Case No. CV 11-3500-JSW

**DEFENDANT ANDREW TRADER'S
NOTICE OF MOTION AND MOTION:**

- (1) **TO DISMISS THE FOURTH CAUSE
OF ACTION OF THE COMPLAINT
FOR PURPORTED BREACH OF
CONTRACT;**
- (2) **TO STRIKE CLAIM FOR SPECIFIC
PERFORMANCE; OR IN THE
ALTERNATIVE,**
- (3) **FOR A MORE DEFINITIVE
STATEMENT**

Filed Contemporaneously With:

- (1) Memorandum of Points & Authorities;
- (2) Request for Judicial Notice; and
- (3) Declaration of Scott Vick; and
- (4) [Proposed] Order

Date: October 14, 2011
Time: 9:00 a.m.
Location: Courtroom 11

NOTICE OF MOTION AND MOTION TO DISMISS, TO STRIKE AND FOR A MORE DEFINITIVE STATEMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant Andrew Trader (“Mr. Trader”) will and hereby does move this Court pursuant to Federal Rule of Civil Procedure, Rule 12(b)(6), Rule 8(a), and Rule 12(e), respectively, for an order: (1) Dismissing the Fourth Cause of Action in the Complaint against Mr. Trader for purported Breach of Contract, or in the alternative; (2) For a More Definitive Statement with respect to Plaintiff’s Fourth Cause of Action for purported Breach of Contract.

Mr. Trader’s Motion to Dismiss the Fourth Cause of Action in the Complaint against Mr. Trader for purported Breach of Contract is brought pursuant to Rule 8(a) and Rule 12(b)(6) on the grounds that the Complaint fails to state a claim upon which relief can be granted. Mr. Trader’s alternative Motion For A More Definitive Statement is brought pursuant to Rule 8(a) and Rule 12(e) on the grounds that the allegations against Mr. Trader in the Fourth Cause of Action for purported Breach of Contract are so vague or ambiguous that Mr. Trader cannot reasonably prepare a response.

PLEASE ALSO TAKE NOTICE THAT Mr. Trader will and hereby does move this Court, pursuant to Federal Rule of Civil Procedure, Rule 12(f) for an order striking Plaintiff’s Prayer for Relief section (f) seeking specific performance. This motion is made on the ground that this prayer for relief is immaterial because, on the face of the Complaint and as a matter of law, the Court cannot order specific performance of the contract.

These Motions shall be brought for hearing before the Honorable Jeffrey S. White, United States District Court for the Northern District of California (San Francisco Division), San Francisco Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, California 94102 on October 14, 2011 at 9:00 a.m., or shortly thereafter.

These Motions are based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Request for Judicial Notice and accompanying exhibits

1 filed therewith, the Declaration of Scott Vick, argument of counsel, on all the pleadings and
 2 papers of record in this matter, and on such other matters as the Court may properly consider on
 3 this motion.

4 **ISSUES TO BE DECIDED**

- 5 1. Whether the Court should dismiss Plaintiff's Fourth Cause of Action for
 6 purported Breach of Contract against Mr. Trader on the grounds that it fails to
 7 state a claim upon which relief can be granted because it: (a) fails adequately to
 8 allege, in violation of Rule 8 of the Federal Rules of Civil Procedure, how Mr.
 9 Trader allegedly breached the contract; (b) fails to allege that conditions
 10 precedent have been satisfied?
- 11 2. Whether the Court should strike Plaintiff's Prayer for Relief for specific
 12 performance against Mr. Trader on the Fourth Cause of Action for purported
 13 Breach of Contract on the grounds that, as a matter of law, specific performance is
 14 not available as a remedy based on the facts alleged in the Complaint?
- 15 3. Whether the Court should order that Plaintiff provide a more definitive statement
 16 of the basis for its Fourth Cause of Action for purported Breach of Contract
 17 against Mr. Trader on the grounds that the Complaint's allegations are so vague or
 18 ambiguous that Mr. Trader cannot reasonably prepare a response?
 19

20 DATED: August 5, 2011

VICK LAW GROUP, APC

21
 22 By: /s/ Scott Vick

23 VICK LAW GROUP, APC

Scott Vick (No. 171944)

24 Lital Gilboa (No. 263372)

25 Attorneys for Defendant

26 ANDREW TRADER
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